United Nations S/2006/881

Security Council

Distr.: General
13 November 2006

Original: English

Letter dated 7 November 2006 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its sixty-first session, which was held in Geneva from 31 October to 3 November 2006.

During the opening plenary meeting, representatives of Kuwait, Iraq and India addressed the Council.

During the session, the Council discussed the following issues and decided as follows:

1. To take note of the "Report of the Executive Secretary: Summary of Activities", covering the period from 1 June to 30 September 2006;

2. With respect to the issue of the shortfall of income to the Compensation Fund, to take note that the shortfall had increased to approximately $51 million according to the most recent audit of the Development Fund for Iraq covering the period 1 July-31 December 2005; to request that the Executive Secretary continue to follow up with the Controller; and to request that the secretariat keep the Council advised of any new developments;

3. To approve 22,320 corrections to certain category A, B, C and D claims contained in the thirty-fifth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.261 (2006)), which arose from the Governing Council's direction to the secretariat at its fifty-ninth session, held from 7 to 9 March 2006, to prepare article 41 corrections with respect to confirmed overpayments as a result of multiple claims having been filed by the same or related claimants;

4. With regard to the follow-up programme for environmental awards, to take note of the update provided by the secretariat on the activities of the follow-up programme and to request that the secretariat provide updates on the programme at future sessions of the Governing Council;

5. With respect to the issue of the environmental monitoring and assessment databank, to take note that the secretariat had transmitted the information in the databank to each claimant Government in accordance with their request at the fourth regional meeting on regional cooperation, held on 2 May 2006, and that the regional

06-61345 (E) 201106

database is being established in Kuwait, and to request the secretariat to advise the Governing Council when the regional database has been launched;

6. To take note of the report of the Executive Secretary on the distribution of payments and transparency and the return of undistributed funds, and to request the secretariat to continue to inform the Governing Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds;

7. With respect to the issue of overpayments resulting from multiple claims filed by the same or related claimants, to note that the secretariat had completed the investigation into the scope of potential overpayments in accordance with the guidelines approved by the Governing Council, and had prepared article 41 corrections in respect of confirmed overpayments for all but a few hundred of the paid claims; to note that the remaining corrections to be made to paid claims will be included in a further article 41 report to be presented to the Governing Council in December 2006; to note that as at 30 October 2006, the secretariat had confirmed overpayments in relation to 25,102 claims in the total amount of $62.98 million; to note that these confirmed overpayments involved a total of 71 Governments and other submitting entities, and that approximately $37.4 million of the aforesaid amount arose as a result of types of overpayments that Governments and other submitting entities reasonably could have been able to detect (hereinafter "identifiable overpayment"), namely same claimant and family duplicate claims and decision 21 claims; to note that identifiable overpayment is distinguished from the approximately $25.58 million of confirmed overpayment that Governments and other submitting entities could not have reasonably detected, namely decision 24 claims, cross-submitting entity claims, corrections resulting from technical errors, cross-category duplication in respect of losses other than departure, and upward adjustments mistakenly initiated by the secretariat;

8. To recall that following the approval of the thirty-fourth article 41 report at the sixtieth session (S/AC.26/2006/2), notes verbales were sent to relevant Governments and other submitting entities requesting that they use "best efforts", which were described therein, to recover from claimants all overpayments confirmed by the corrections; to note that following the approval of the thirty-fifth article 41 report at the current session (S/AC.26/2006/3) another round of "best efforts" notes verbales will be sent to Governments and other submitting entities with respect to the 22,320 corrections in the report;

9. In its consideration as to whether any other measures, in addition to article 41 corrections and "best efforts" notes verbales, should be employed to recover overpayments, to recall that both the Office of Internal Oversight Services and the United Nations Board of Auditors had made recommendations in connection with the recovery of overpayments; to recall that the Council had designated claims in categories A, B and C as urgent humanitarian claims, to be processed on an expedited basis and using mass claims processing techniques; to note that the $62.98 million figure represents approximately one tenth of 1 per cent of the total amount of compensation awarded by the Compensation Commission or approximately one half of 1 per cent of the total amount of compensation awarded in categories A, B, C and D; to note that approximately 16,500 repayable claims were not the subject of requests for repayment as the claimants were not located, and that some of the awards in respect of stand-alone or overlapping claims were

not paid out as a result of bilateral committee determinations or capping procedures, with the result that the awards of compensation for these claims, in the estimated total amount of approximately $50 million, revert to the Compensation Fund;

10. To request that Governments and other submitting entities exercise "best efforts" to recover all overpayments from their claimants, but, given that identifiable overpayment could reasonably have been detected prior to payment, to request Governments and other submitting entities to pay any portion of the identifiable overpayment that is not recovered from claimants, up to the amount they charged as processing fees in respect of claims in categories A, B, C and D and in that regard, to recall that under decision 18 (S/AC.26/Dec.18 (1994)), submitting entities were permitted to charge up to 1.5 per cent in respect of claims in categories A, B and C, and up to 3 per cent in respect of claims in categories D, E and F;

11. To request that holds be placed on the payment of awards to Governments with governmental or quasi-governmental awards still to be paid, up to the amount of identifiable overpayment, capped at the amount of processing fees charged in respect of claims in categories A, B, C and D; in the case of the Islamic Republic of Iran, however, to request that the payment hold be sufficient to address the total amount of overpayment, given the apparent irregularities in supporting identity documents provided to demonstrate that certain claims were not duplicates and the absence of clarifications with respect thereto;

12. To request that if, by the time of the deadlines set for reporting on the results of "best efforts", all identifiable overpayment has not been recovered, the amount of unrecovered identifiable overpayment, capped at the amount of processing fees charged in respect of claims in categories A, B, C and D, be set off against the final payment made to a Government in respect of a governmental or quasi-governmental award; with respect to the Islamic Republic of Iran, to request that all unrecovered overpayment be set off against the governmental award for the reasons set out in the previous paragraph;

13. To request that once a final set-off against a governmental or quasi-governmental award is made, the affected Government be provided with a list of the claims that comprise the amount of the set-off and to note that any amount subsequently collected by the Government in respect of the listed claims may be retained by the Government and remitted to the named claimant on the governmental or quasi-governmental claim that was subject to the set-off;

14. To require Governments and other submitting entities without governmental or quasi-governmental awards or that have no funds left to be paid in respect of such awards, to return the amount of unrecovered identifiable overpayment, capped at the amount of processing fees charged in respect of claims in categories A, B, C and D; in addition, in respect of future award payments in relation to individual or corporate claims, to retain the amount that such Government or other submitting entity would have charged as processing fees, in accordance with the practice notified to the Compensation Commission, to reduce the amount of its identifiable overpayment;

15. With respect to the current duplication-related suspensions on payments to the late-file claims that were the subject of the report and recommendations of the "D1" panel of Commissioners concerning the late-filed category "A" and category "C" claims programme (S/AC.26/2005/2) and the additional suspension on

payments to the Islamic Republic of Iran, to request that the secretariat release the suspensions with respect to Pakistan, the Philippines and Sri Lanka, and to release the suspension with respect to the Islamic Republic of Iran to the extent that the existing payment hold exceeds the amount required to address the total overpayment;

16. To request that the secretariat keep the Governing Council informed regarding the responses received from claimant Governments and other submitting entities with respect to the matters set out above;

17. Finally, on the issue of overpayments, in the light of the statement made by the delegation of Iraq at the opening plenary meeting at this session and at previous sessions on this issue, to request that the secretariat advise Iraq of the Council's conclusion on this issue and the measures being taken by the Commission;

18. With respect to the audit of UNCC activities, to take note of the annual report of the Office of Internal Oversight Services (OIOS) to the General Assembly and the United Nations Board of Auditors report and the response of the Executive Secretary thereto; while recognizing the importance of effective audit, to express concern about apparent lack of understanding of the UNCC mission and methods of work as reflected in the annual report; to take note that the secretariat will provide the Council with copies of the final OIOS audit reports on the strategic planning process and the duplicates exercise when they become available together with the responses of the Executive Secretary; and to request that the secretariat continue to provide updates on audit issues at future informal meetings of the Working Group and to keep this issue on the agenda of the Governing Council;

19. With respect to the OIOS request for two audit posts for 2007 and the proposed OIOS provisional workplan for 2007, to take note that in pursuance of the request made to him by the Governing Council at its sixtieth session, the Executive Secretary had met with the Under-Secretary-General for Internal Oversight Services; to recall the decision taken by the Committee on Administrative Matters (CAM) at its twentieth meeting in June 2006 to approve the sum of $100,000 for audit activities for 2007 given the planned phase-out of the secretariat as of mid-2007; and, while aware of the Executive Secretary's proposal which emerged from his meeting with the Under-Secretary-General for Internal Oversight Services, to provide for one full-time auditor in 2007, to take note that the OIOS audit in 2007 had to be consistent with the phasing-out of the UNCC and to maintain that the current allocation of $100,000 was sufficient and that no change was warranted;

20. With respect to Jordanian claim No. 5000304, to take note of the conclusion adopted by the Council on 18 October 2006 pursuant to paragraph 9 of the Guidelines for the conduct of the work of the Governing Council (S/AC.26/1991/R.5), as set out in the note verbale from the President of the Governing Council to Council members dated 10 October 2006, that future payments to the Government of Jordan with respect to that claim be withheld until such time as a phasing plan, detailing the award amounts to be released upon successful completion of each phase, has been submitted by the Government of Jordan and approved by the Governing Council pursuant to decision 258 and that the secretariat keep these payments in the Fund and earmarked for Jordan until the above requirements have been fulfilled, so as to ensure the future availability of these funds for this claim;

21. With respect to 56 claims currently marked pending in the database, to take note that these contained detainee/missing person-related losses; to recall that at its fifty-second session, held from 29 June to 2 July 2004, it established 30 September 2004 as the final filing deadline for the submission of deceased detainee claims under decision 12 (S/AC.26/1992/12) and that no requests or new claims were filed concerning these persons; to note that these claims were suspended a number of years ago and that neither the family members nor the relevant Governments have further followed up with the Commission on these claims, with the exception of one claim, for which Kuwait advised in 2002 that the claimant had never been a prisoner-of-war and had, in fact, left Kuwait during the invasion period; to decline to consider losses relating to detainee/missing persons for processing or compensation and to request that affected Governments be advised accordingly; with respect to the other personal losses included in these claims, to note that they were filed within the deadline for such filing and that they could have been severed from the detainee/missing person-related losses and processed during the regular claims programme; to request that the secretariat process these claims "as is", applying the appropriate methodologies; and to request that the Executive Secretary present the valuation results in a report for the Governing Council's consideration at its next session;

22. With respect to the requests by various Governments for the extension of the 30 September 2006 deadline for the location and payment to unlocated claimants, to note that the secretariat had indicated additional requests for repayment following the expiry of the deadline and that the secretariat had indicated that it had the resources to accommodate these additional requests; to decline to extend the 30 September 2006 deadline; and to direct the secretariat to process requests for repayments it had received, and included in its report of 31 October 2006, owing to administrative delays;

23. With respect to the request by the Government of India that the Governing Council consider accepting more than 8,000 individual claims for late-filing, to note that it had previously considered this request at its fifty-ninth and sixtieth sessions and to recall decision 219 (S/AC.26/Dec.219 (2004)), in which the Governing Council decided that it would not accept further late-filed claims; and to decline the request;

24. With respect to India's request for a six-month extension of the January 2007 "best efforts" deadline, to emphasize that it expects and encourages Governments to continue their "best efforts" after the deadline and to note that three months remained before its expiry; to request the secretariat to advise the Government of India that it should continue its "best efforts" within the remaining time and report back to the Governing Council by the January 2007 deadline on progress made at that point for the Governing Council's assessment;

25. To take note that the Committee on Administrative Matters held its twenty-first meeting in Geneva on 2 November 2006 to discuss proposed revisions to the approved budget of the Executive Secretary for the biennium 2006-2007, and that the Committee approved, by consensus, the adjustments to the approved 2006-2007 budget which are contained in the report of the Committee on Administrative Matters to the Governing Council (S/AC.26/2006/R.25), which has been made available to Governing Council members;

26. To refer the issue of the payment of an award to a directly submitted claim to the next informal meeting of the Working Group for further consideration;

27. To hold the sixty-second session of the Governing Council from 20 to 22 February 2007; to hold the sixty-third session of the Governing Council from 20 to 22 June 2007; and to hold informal meetings of the Working Group between regular sessions of the Governing Council as required.

Finally, the Council was informed by the secretariat that the next payment to successful claimants pursuant to decision 256 was scheduled to be made in January 2007; that as at 31 October 2006, the balance of the Fund was approximately $178 million; that there were 47 approved claims (in categories E and F), with a total outstanding balance of approximately $31 billion, that had not been paid in full; and that the overall amount of compensation made available to date by the United Nations Compensation Commission was approximately $21.4 billion.

(*Signed*) Ambassador Tassos **Kriekoukis**
President of the Governing Council